



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,456	09/16/2003	Pascal Simon	229971US0	2515
22850 7590 06/04/2007 OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER RAMACHANDRAN, UMAMAHESWARI	
			ART UNIT 1617	PAPER NUMBER
			NOTIFICATION DATE 06/04/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
oblonpat@oblon.com  
jgardner@oblon.com

**Office Action Summary**

Application No.

10/662,456

Applicant(s)

SIMON ET AL.

Examiner

Umamaheswari Ramachandran

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 and 28-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 and 28-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

The examiner notes the receipt of the amendments and remarks received in the office on 2/23/2007. Applicants' declaration received in the office on 2/23/2007 is acknowledged. Claims 1, 24 and 28 have been amended, claims 24-27 have been withdrawn and claims 1-23 and 28-32 are pending and examined this time.

The defects in the Oath/Declaration and the rejection of claims 30-32 under 35 U.S.C 112 second paragraph have not been addressed in the response received in the office on 2/23/2007 and hence the rejection is maintained and is given below for Applicants' convenience. Applicants' arguments regarding the rejection of claims 1-14, 16-23, 28-32 as being anticipated by McAtee et al. (WO 99/13861) have been fully considered but they are not persuasive. Applicants' amendment necessitated a modified rejection and is given below.

#### ***Oath/Declaration***

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:  
Non-initialed and/or non-dated alterations have been made to the oath or declaration. See 37 CFR 1.52(c).

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 1617

Claims 30-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 30 is viewed as indefinite because it recites the limitation "article made by the process according to Claim 28." Claim 28 is directed to a method of using an article (i.e. moistening an article) rather than a method of making it. Referring to the method cited in Claim 28 as to the process of making an article is confusing. Claims 31 and 32 are rejected because they contain all the limitations of Claim 30 rejected for the reasons given above.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-14, 16-23 and 28-32 are rejected under 35 U.S.C. 102(b) as being anticipated by McAtee et al. (WO 99/13861), supplied by the Applicant. McAtee et al. teach a substantially dry personal cleansing article for cleansing the skin or hair by Wetting the dry article with water, comprising a water-insoluble substrate (e.g. a non-woven synthetic or natural material) having multiple layers. See Abstract; p. 9, lines 23-27; p.18, lines 21-37; p. 63, lines 22-27; p. 64, line 21; p. 68, lines 17-19. The reference further teaches emulsifier (0.1%-20%) in the composition that is capable of forming an emulsion of the internal and external phases and are oil soluble and HLB values typically ranging from about 1 to about 7 (p 37, lines 36-37 and p 38, lines 1-13). The

Art Unit: 1617

reference teaches sorbitan esters, glyceryl esters, polyglyceryl esters etc (p 38, lines 14-37, p 39, lines 1-6). The article of McAtee et al. is impregnated with a substantially anhydrous composition (i.e. containing preferably less than about 5% by weight of water and more preferably less than about 1% by weight of water) comprising 0.5-12.5% of a lathering surfactants, such as non-ionic lathering surfactants (e.g. polyhydroxy fatty acid amides, alkoxyated fatty acid esters, lathering sucrose esters, etc.); 0.05-99% of a conditioning component such as mineral oil, petrolatum, fatty esters, silicone oils, vegetable oils; and 0.05-0.5% of hydrophilic thickeners and viscosity modifiers such as crosslinked polyacrylic resins (e.g. Carbopol). See p. 23, line 7; p. 25, line 23 - p. 27, line 8; p. 30, line 30 - p. 35, line 34; p. 37, lines 21-28; p. 38, lines 11-12, 14-26. The substrate can be made into a variety of shapes and forms including flat pads, thick pads, thin sheets; square, round, rectangular or oval pads. See p. 19, lines 22-30. The article of McAtee et al. may contain additional ingredients such as lipophilic or hydrophilic active agents, lipids such as beeswax or other waxes, colorants, perfumes, antioxidants, etc. See p. 40, lines 9-36; pp. 52-62; p. 63, lines 4-20. The article of McAtee et al. comprises 0.25-150% of the impregnating composition by weight of the substrate. See p. 36, lines 24-35. Thus, McAtee et al. teach each and every limitation of Claims 1-14, 16-23 and 28-32.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 1617

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over McAtee et al. (WO 99113861).

McAtee et al. applied as above. The reference does not explicitly teach the claimed viscosity of the impregnating composition. However, determination of optimal or workable viscosity of the impregnating composition by routine experimentation is obvious absent showing of criticality of the claimed viscosity. One having ordinary skill in the art would have been motivated to do this to obtain the desired deposition of the conditioning components onto the skin or hair.

### ***Response to Arguments***

Applicants' declaration in reply of the Office Action dated 10/25/2006 is acknowledged.

Applicants' argue that McAtee does not specifically describe using emulsifying surfactants. In response, McAtee teach emulsifiers which are emulsifying surfactants in the composition and also teach them as oil soluble and have an HLB (Hydrophile lipophilie balance) in the range of from about 1 to about 7 (p 38, lines 8-13). The HLB value falls within the range of the limitation in claims 1 and 28. This addresses the limitations of the amended claims 1 and 28.

### ***Conclusion***

No Claims are allowed.

Art Unit: 1617

Applicant's amendment necessitated the modified rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Umamaheswari Ramachandran whose telephone number is 571-272-9926. The examiner can normally be reached on M-F 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1617

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

\*\*\*



SREENI PADMANABHAN  
S - PRIMARY EXAMINER

5/26/07